

**CITY OF RYE**  
**MEMORANDUM**

TO: Michael A. Genito, City Comptroller

FROM: Kevin J. Plunkett, Esq., Corporation Counsel

DATE: February 27, 2004

RE: Occupancy Taxes

This memorandum will respond to the questions raised by you and the Finance Committee regarding motel occupancy taxes.

**I. Establishment of a Motel Occupancy Tax**

You inquired regarding the process that the City would need to follow in order to establish a motel occupancy tax.

The New York State Constitution reserves all taxing power to the State. See N.Y. CONST. art. XVI, § 1. A municipality does not possess the inherent power to assess and levy taxes. County Securities, Inc. v. Seacord, 278 N.Y. 34 (1938). Rather, a municipality possesses only the taxing power which has been expressly delegated to them by the New York State Legislature (the "Legislature"). See id.; Genet v. City of Brooklyn, 99 N.Y. 296 (1885). Section 10(1)(ii)(a) of the Municipal Home Rule Law provides that a county, city, town or village may adopt local laws, whether or not they are related to the property, affairs of government, relating to, among other things, the levy and administration of local taxes authorized by the Legislature and the collection of local taxes authorized by the Legislature.

As a result of the foregoing provisions, a municipality may enact local laws with respect to the levy and collection of local taxes only if the Legislature has first authorized those taxes. See Op. State Compt. 84-49. Since there is no general authority for counties, cities, towns or villages to impose a motel occupancy tax, special legislation must be enacted by the Legislature in order to authorize a municipality to levy such a tax. See id. Please note that the Legislature has authorized certain municipalities to levy a hotel occupancy tax. See, e.g., TAX LAW § 1202-g (authorizing and empowering the County of Westchester to levy a hotel and motel occupancy tax).

Accordingly, in order to establish a motel occupancy tax in the City of Rye, the Legislature must enact special legislation in order to authorize the City of Rye to levy the tax. After it is authorized and empowered to levy the tax, the City of Rye would enact a local law to impose the tax.

## II. Private Clubs and “Non-Hotel” Accommodations

You also inquired as to whether a motel occupancy tax can be imposed on private clubs and other “non-hotel” accommodations. The answer to your question depends upon whether the enabling legislation for the tax permits such an imposition. For example, the definition of “hotel” varies in the current enabling statutes for the various municipalities. See, e.g., N.Y. TAX LAW § 1202-g (with respect to the County of Westchester, the term “hotel” includes an apartment hotel, a motel or a boarding house, whether or not meals are served); N.Y. TAX LAW § 1202-h (with respect to Chemung County, the term “hotel” or “motel” means and includes any facility providing lodging on an overnight basis and includes those facilities designated and commonly known as “bed and breakfast” and “tourist” facility). Whether a place is or is not a “hotel” may also depend on the circumstance of the individual case. Kraus v. Birns, 39 Misc.2d 562, 241 N.Y.S.2d 189 (Sup. Ct. N.Y. Co. 1963).

## III. Maximum Rate

Finally, you inquired as to the maximum rate that can be charged. The rate would be established by the enabling legislation. The current enabling statutes for the various municipalities set forth different rates, which primarily range from one percent to five percent of the per diem rental rate. In Saratoga Springs, the county’s tax is one percent and the city’s tax is five percent. See N.Y. TAX LAW §§ 1202-g(1), (1-a), (1-b) and (1-c). Other cities that have been authorized to levy a hotel or motel tax include New York (the tax varies depending upon the rental rate of the room; see N.Y. UNCONSOL. LAW § 9441)), Canandaigua (tax of three percent; see N.Y. TAX LAW § 1202-l(1)), Niagara Falls (tax of four percent; see N.Y. TAX LAW § 1202-l(1)) and Lockport (tax of four percent; see N.Y. TAX LAW § 1202-o(1)).

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Kevin J. Plunkett